

(1996) 10 DEL CK 0054

In the Delhi High Court

Case No : Regular Second Appeal No. 86 of 1996 and Civil Miscellaneous Appeal No. 1550 of 1996

Brahma Devi

APPELLANT

Vs

Krishna Devi

RESPONDENT

Date of Decision : 03-10-1996

Acts Referred:

Delhi Rent Control Act, 1958 — Section 50

Citation : (1996) 64 DLT 597 : (1996) 39 DRJ 747

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : S.C. Bisaria and R.N. Goswami, for the Appellant;

Judgement

Usha Mehra, J.

(1) The appellant, Smt. Brahma Devi has raised one important question as to "whether the Civil Court had no jurisdiction to entertain and try the suit for grant of decree of ejectment of the appellant from the premises after the area was notified as urbanised/developed area". Since the area in question where the suit property is situated had been urbanised hence the Civil Courts jurisdiction was hit by the provisions of Section 50(2) of Delhi Rent Control Act (in short Drc Act). Secondly the First Appellate Court did not take cognizance rather ignored the fact of the decree/ judgment passed in Suit No.300/78 decided on 21st July,1979, whereby it was held that present respondent was not the owner of the suit property. Hence that decision operates as resjudicata and the present suit ought to have been dismissed on this ground. Finally in order to terminate the tenancy notice u/s 106 of the Transfer of Property Act ought to have been issued. Having not done so the suit of ejectment was not maintainable.

(2) To appreciate the contentions raised by the appellant, brief and relevant facts of the case are that the respondent Smt.Krishna Devi claimed herself to be the owner and landlady of the suit premises. This appellant had taken, the premises in question on rent in the year 1972 on a monthly rent of Rs.40.00 . She had

been paying the rent to one Shri Ram Chander. Present respondent filed three set of suits against one Shri Sohan Lal and the present appellant Smt. Brahma Devi. Since all the suits raised common questions of law and facts hence disposed of by a common judgment. Suit for possession by the respondent were decreed against the present appellant as well as Shri Sohan Lal. Respondent's suit for recovery of arrears of rent against the present appellant was also decreed. In all those cases it was the assertion of the present respondent that she was the owner landlady of property No.WZ-118, Plot No.G-21-B, Palam Enclave, New Delhi. That she had purchased the same from Shri Dharam Dev Solanki who in turn had purchased it from Shri Jhaman Lal and Shri Ram Chander. Appeal preferred by the present appellant against those decrees has also been dismissed. There is thus concurrent finding that Smt.Krishna Devi, the present respondent is the landlady of the suit premises. That the appellant is tenant in this premises of which Smt.Krishna Devi is the landlady. That the suit premises is not covered under the Drc Act. It is against these concurrent findings of fact and law that present appeal had been preferred. It is the contention of the appellant before the Court that respondent was not owner of this premises. It was so held in Suit No.300/78 decided on 21st July, 1979. That decision would operate as resjudicata. The Courts below wrongly decided the issue of resjudicata against the appellant. Similarly the issue of maintainability of the suit on erroneous presumption has been decided in favor of the present respondent.

(3) At the outset we have to keep in mind that there is a concurrent finding of facts that Smt.Krishna Devi is the landlady and present appellant her tenant. The said finding was given after recording evidence and appreciating and evaluating the same. Therefore, in the second appeal unless there is serious error the concurrent finding of fact cannot be interfered . Mr. Sarvesh Bisaria, appearing for the appellant contended that Mr. Darshan Singh Sidhu, Sub Judge in Suit No.300/78 had held that Smt.Krishna Devi was not the owner and even Shri Dharam Dev Solanki had no right, title or interest in this property, Therefore, the Trial Court fell in error in concluding that Smt.Krishna Devi had a right to seek ejectment or that the principles of resjudicata were not applicable. I am afraid this argument has no force. There is uncontroverted admission of the appellant that she had been paying rent to Shri Ram Chander. He was her landlord. The said Ram Chander appeared as Krishna Devi's witness. Appearing as a witness for the respondent (plaintiff before the Trial Court) the said Ram Chander stated that he was collecting rent on behalf of Shri Jhaman Lal, his son. He further testified that Shri Jhaman Lal sold this property to Shri Dharam Dev Solanki. It was the case of the respondent herein through out that she purchased this property from Shri Dharam Dev Solanki. In view of this admission by Shri Ram Chander that the property was sold to Shri Dharam Dev Solanki who in turn sold it to Smt.Krishna Devi, there was no question of dispute regarding landlord tenant relationship between the appellant and Smt.Krishna Devi. It was a question of fact which has been proved on record. In the cross- examination of Shri Ram Chander, the only suggestion given was that he inducted Smt. Brahma

Devi, the present appellant and Shri Sohan Lal as tenants. It was not put to him that he never sold this property to Shri Dharam Dev Solanki or that Mr. Solanki never-further sold the property to Smt.Krishna Devi or that after the sale of the property to Shri Dharam Dev Solanki or Smt.Krishna Devi the rent was received by him. Shri Jhaman Lal appearing as witness for this respondent corroborated the fact that the property in question was sold to Shri Dharam Dev Solanki. Shri Dharam Dev Solanki further sold it to Smt.Krishna Devi, the present respondent. Both Shri Ram Chander and Shri Jhaman Lal appearing as witnesses testified that they had nothing to do with the property in question after having sold the same to Shri Dharam Dev Solanki and subsequent thereto to Smt.Krishna Devi. When confronted they clarified that the sale deed was not executed but a General Power of Attorney was executed in favor of Shri Dharam Dev Solanki. General Power of Attorney in favor of Shri Dharam Dev Solanki has been proved on record as Exhibit PW.1/1. This General Power of Attorney Exhibit PW.1/1 authorised Shri Dharam Dev Solanki to dispose of the suit property in any manner he liked. Shri Dharam Dev Solanki appearing as DW.1 testified that he purchased the property from Shri Jhaman Lal vide General Power of Attorney Exhibit PW.I/I. He in turn sold this property bearing No.WZ-118, Palam Enclave, New Delhi to Smt.Krishna Devi, the present respondent. Therefore, Smt.Krishna Devi became the landlady of the property and the appellant became her tenant in the suit property. Admittedly, the appellant is a tenant in the suit premises. She admitted that she was initially inducted as & tenant by Shri Ram Chander and she had been paying rent to Shri Ram Chander. Shri Ram Chander testified that he had been collecting the rent on behalf of his son Shri Jhaman Lal. Thereafter rent was paid to Shri Dharam, Dev Solanki on the asking of Shri Ram Chander. Hence the First Appellate Court was justified in coming to the conclusion that the appellant herein having accepted the attornment of tenancy in favor of Shri Dharam Dev Solanki now could not challenge the relationship of landlord and tenant. Shri Dharam Dev Solanki appearing as DW-1 proved on record that he sold the property in question to Smt.Krishna Devi (the present respondent). He relinquished all his right in favor of Smt.Krishna Devi including the right to collect the rent of this premises. Clear picture regarding relationship of appellant and the respondent emerged through the testimonies of Shri Ramchander, Shri Jhaman Lal and that of Shri Dharam Dev Solanki. It has been established through the uncontroverted testimony of Shri Ram Chander that he was collecting the rent on behalf of Shri Jhaman Lal, the owner of this property. Shri Jhaman Lal sold his property by executing General Power of Attorney in favor of Shri Dharam Dev Solanki. He in turn sold it to Smt.Krishna Devi. The attornment in favor of Mr. Solanki having been admitted by the appellant, I see no reason to disagree with the conclusions arrived at by the Courts below that Smt.Krishna Devi became the landlady of the property in question. Hence, the relationship of the landlord and tenant came into being between the appellant and the respondent. No evidence was led by the appellant herein to prove otherwise. In view of this clear picture having emerged on the basis of evidence placed on record it cannot be said that Smt.Krishna Devi as landlady could not

institute the suits. The First Appellate Court rightly concluded that for the relationship of landlord and tenant, it was not necessary to have the right of ownership determined. Since the relationship was established by the uncontroverted and unrebutted testimonies of S/Shri Ram Chander, Jhaman Lal and Dharam Dev Solanki, the question of ownership was of no consequence. Hence the decision of Shri Darshan Singh Sidhu, Sub Judge in Suit No-300/78 had no relevance to the issue before the Court in these suits. Reliance by Mr. Sarvesh Bisaria on the decision of the Supreme Court in the case of Sulochana Amma Vs. Narayanan Nair, is of no help to him because as observed by the First Appellate Court he was not going to decide whether the respondent herein was the owner or not? Therefore, the question of applicability of principles of resjudicata did not apply to the facts of this case. The relationship having been established as that of a landlord and tenant which was not at issue in Suit No-300/78, Therefore, the Courts below rightly came to the conclusion that once relationship was established and it having been established that the present appellant was the tenant of the respondent. She could not claim better title than that of the landlady. Hence the right to sue vested with the respondent. The question of principles of resjudicata did not come into play.

(4) The second limb of Mr. Sarvesh Bisaria's arguments that the Civil Court had no jurisdiction to try the suit because of the Notification of July,1987 declaring the area where property in question is situated as urbanised area. Hence the Drc Act automatically came into operation. According to Mr. Bisaria once an area is declared urbanised the Civil Court loses its jurisdiction. Repelling this argument Mr.R.N. Goswami, appearing for the respondent contended that the Notification dated 30th July,1987 does not apply retrospectively. The suit was filed in August,1980 i.e. prior to coming in force of this. Notification. Secondly, this Notification has neither been published under the Municipal Corporation Act nor under the Drc Act. In the absence of any separate notification under the Drc Act the provision of said Act would not automatically apply. A mere Notification declaring the unauthorised colony as development area would not attract the provisions of Drc Act. The reading of the Notification dated 30th July,1987 clearly show that this was issued for the purpose of declaring 155 unauthorised colonies as development area. It nowhere says that these development areas would be covered by the Drc Act. Similarly, the second Notification dated 24th October, 1994 is also of no help to the appellant. The First Appellate Court discussed the implications of this Notification dated 24th October,1994 in its judgment. The second Notification of 1994 simply says that those rural areas would cease to be so on the issuance of this Notification. It nowhere indicates that these would be covered by the Drc Act. I find force in these submissions of Mr.R.N. Goswami, because even if an area is declared to be urbanised still as per the proviso to Sub Section 2 of Section I of Drc Act, Central Government has to issue a separate Notification covering that urbanised area under the Drc Act. The proviso to Sub Section 2 of Section I of Drc Act reads as under :-

"PROVIDED that the Central Government may, by notification in the Official

Gazette, extend this Act or any provision thereof, to any other urban area included within the limits of the Municipal Corporation of Delhi or exclude any area from the operation of this Act or any provision thereof."

(5) Reading of this proviso makes it absolutely clear that a separate Notification in the Official Gazette extending the applicability of Drc Act was a must. Having not placed on record any such Notification issued by the Central Government in the Official Gazette as required under the proviso of Sub Section 2 of Section I, it cannot be said that Drc Act became applicable in this case. It would not be out of place to mention that counsel for the appellant conceded before the First Appellate Court that the area in question has not been covered under the Drc Act. This is so recorded by the First Appellate Court in para 36 of his judgment. In fact the appellant did not challenge this aspect before the First Appellate Court rather he gave up this issue. In view of what has been stated in para 36 of the judgment, appellant now in second appeal can not rack up the same issue over again. There is no quarrel with the proposition of law that once the Drc Act is made applicable then all proceedings including the execution proceedings would come to an end before the Civil Court. But that is not the case in hand. Therefore, reliance by Mr. Sarvesh Bisaria on the judgment of this Court in the case of Ram Parshad Vs. Onkar Nath 1970 R.C.R. 279 is of no help to him because as already observed above, it has been conclusively proved on record that Drc Act has not been made applicable to the area in question. Notification as required under proviso to Sub Section 2 of Section I of Drc Act by the Central Government has not been issued covering this area.

(6) Lastly the question regarding notice u/s 106 of the Transfer of Property Act is the question of fact on which there is concurrent finding. In the second appeal it cannot be gone again. Suffice it to say, that I find no merits in the appeal nor any infirmity in the impugned order. Dismissed.